

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

GENE GANDY,

Appellant,

v.

YAKIMA VALLEY COMMUNITY COLLEGE,

Respondent.

Case No. RIF-00-0017

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 Hearing. Pursuant to RCW 41.64.060 and WAC 358-01-040, this appeal came on for hearing before the Personnel Appeals Board, GERALD L. MORGEN, Vice Chair. The hearing was held on November 1, 2001, at Yakima Valley Community College In Yakima, Washington. WALTER T. HUBBARD, Chair, reviewed the record and participated in the decision in this matter. LEANA D. LAMB, Member, did not participate in the hearing or in the decision in this matter.

1.2 Appearances. Appellant Gene Gandy was present and was represented by Mark S. Lyon, General Counsel for the Washington Public Employees Association. Patricia A. Thompson, Assistant Attorney General, represented Respondent Yakima Valley Community College.

1.3 Nature of Appeal. This is an appeal from a reduction-in-force (RIF) due to good faith reorganization for efficiency purposes in conjunction with budget shortfalls and of the RIF options provided to Appellant.

1.4 **Citations Discussed.** WAC 251-10-030; WAC 358-30-170; O’Gorman v. Central Washington University, PAB No. L93-018 (1995); Johnson v. Columbia Basin College, PAB Case No. RIF-00-0012 (2001).

II. FINDINGS OF FACT

2.1 Appellant Gene Gandy was an Instructional Technician 1 and a permanent employee of Respondent Yakima Valley Community College (YVCC) in the Automotive Technology Program. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 251 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on September 25, 2000.

2.2 By letter dated August 17, 2000, Gary Tollefson, the appointing authority's designee, informed Appellant that due to reorganization for efficiency purposes in conjunction with budget shortfalls, his position was being reduced in force (RIF'd) effective September 16, 2000. Mr. Tollefson also stated that Appellant had been placed on the institution-wide layoff list for the Instructional Technician 1-Automotive Technology specialty classification.

2.3 Appellant began his permanent employment as an Instructional Technician 1 in the automotive program in October 1998. Prior to accepting this appointment, Appellant held non-permanent positions as a part-time/hourly Custodian, a part-time/hourly Maintenance Aide and a student mechanics helper at YVCC.

2.4 Appellant's Instructional Technician 1 position was a cyclic year position. As a result, Appellant did not work from mid-June until mid-September. On June 2, 2000, Appellant injured his leg in a motorcycle accident. While he was recovering from his injury, Appellant was informed

1 of his impending RIF. On August 29, 2000, Appellant's physician provided a medical certification
2 stating that Appellant was unable to work from August 29 until September 29, 2000. Appellant was
3 on leave for the first five work days of his cyclic schedule prior to the effective date of his layoff.
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5 2.5 Kathleen Toland was the Dean for Professional and Career Education (PACE). During
6 Spring 2000, Ms. Toland determined that due to increasing enrollment and changes in instructional
7 requirements for the automotive program, the college needed to add another faculty position to the
8 automotive program. However, due to competing priorities at the college, the faculty advisory
9 committee did not approve Ms. Toland's request.
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11 2.6 Also during Spring 2000, Ms. Toland learned that the State Board for Community and
12 Technical Colleges (SBCTC) had directed YVCC to eliminate funding for 48 full-time equivalent
13 students (FTEs) from the worker retraining programs. YVCC received \$3200 per FTE from
14 SBCTC. The budget reduction amounted to \$154,000 for the PACE programs.
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16 2.7 In determining how to implement the reduction, Ms. Toland considered which PACE
17 programs were increasing in enrollment and which were decreasing. Ms. Toland also considered
18 which program funds could be moved to cover the budget shortfall in other areas while still
19 allowing PACE to provide instructional programs to meet the community and work force needs.
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21 2.8 Ms. Toland determined that a number of changes could be made within the PACE
22 programs. These changes included reorganizing the automotive program.
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24 2.9 The automotive program consisted of one full-time faculty member, one part-time faculty
25 member, one parts room attendant and one Instructional Technician 1. Appellant was the
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1 incumbent in the Instructional Technician 1 position. Ms. Toland determined that Appellant's
2 position was not necessary to meet the instructional requirements of the program. Ms. Toland
3 determined that the money being used to fund Appellant's position should be used to fund another
4 faculty position.

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6 2.10 By memorandum dated July 28, 2000, Ms. Toland forwarded her written recommendation to
7 her supervisor, Dr. Gary Tollefson, Vice President for Instructional Services. In addition, she
8 discussed her recommendation with Dr. Tollefson and with Dr. Linda Kaminski, President of
9 YVCC. Both Dr. Tollefson and Dr. Kaminski agreed with the recommendation.

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11 2.11 Prior to implementing Appellant's RIF, Mark Rogstad, Director of Human Resource
12 Services, and Phyllis Strain, Assistant Human Resource Director, reviewed Appellant's employment
13 history. They found that the only permanent position Appellant held at YVCC was the Instructional
14 Technician 1 position in the automotive program. There were no other Instructional Technician 1
15 positions in the automotive program; therefore, Mr. Rogstad and Ms. Strain determined that
16 Appellant had no formal RIF options under WAC 251-10-030(4).

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18 2.12 Mr. Rogstad considered the possibility of offering Appellant a Custodian position as an
19 informal RIF option. However, Mr. Rogstad was aware of Appellant's injury and even though he
20 did not have a medical certification from Appellant's physician, he determined that Appellant was
21 unable to perform custodial duties. Therefore, Mr. Rogstad and Ms. Strain determined that
22 Appellant was not qualified for any RIF options under WAC 251-10-030(5).

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24 2.13 By letter dated August 9, 2000, Mr. Rogstad informed Appellant that he would be RIF'd and
25 that the only option available to him was to elect to be laid off and to have his name placed on the
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1 institution-wide layoff list for the Instructional Technician 1-Automotive Technology specialty
2 classification.

4 **III. ARGUMENTS OF THE PARTIES**

5 3.1 Respondent argues that Appellant's RIF was necessary because of a lack of funds that
6 resulted in a reorganization for efficiency purposes of the automotive technology program.
7 Respondent further argues that the college reviewed all possible options for Appellant in lieu of
8 RIF, but that no options existed for which he was qualified. Respondent contends that student and
9 hourly positions are not appropriate RIF options because those positions are exempt from coverage
10 under Title 251 WAC. Respondent asserts that in August 2000, Appellant either did not have the
11 seniority, did not meet the minimum qualifications, or have the required experience for vacant
12 positions or positions held by probationary or temporary employees at the same or lower classes.
13 Respondent further asserts that Appellant was unable to perform the essential functions of the
14 Custodian positions because he could not walk, climb ladders, empty garbage or pull heavy
15 equipment. Respondent contends that Appellant had no option other than to be laid off.

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17 3.2 Appellant argues that Respondent was required to offer him at least three positions in other
18 classes at the same or lower level and that were vacant or held by temporary or probationary
19 employees. Therefore, Appellant contends that he should have been offered custodian positions.
20 Appellant asserts that those positions were not offered because Respondent made unsubstantiated
21 assumptions about his health. Appellant asserts that he should have been placed in a Custodian
22 position, allowed to use his leave until such time as he could return to work, and if he could not
23 return to work, should have been separated in accordance with WAC 251-10-070. In addition,
24 Appellant contends that he should have been offered part-time hourly work or temporary positions
25 before he was RIF'd. Appellant asserts that if he had been offered the appropriate RIF options, he

1 would still be employed and he would have been able to use his accrued leave until he was able to
2 return to work. Appellant asks that he be reinstated to a position that should have been offered as a
3 RIF option as required by WAC 251-10-030(5).

4 5 **IV. CONCLUSIONS OF LAW**

6 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter
7 herein.

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9 4.2 In an appeal from a reduction-in-force, Respondent has the burden of proof. WAC 358-30-
10 170. Respondent has the burden of proving by a preponderance of the credible evidence that it laid
11 the employee off for the reason stated in the RIF letter. O’Gorman v. Central Washington
12 University, PAB No. L93-018 (1995).

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14 4.3 Respondent has met its burden of proof that Appellant was laid off due to reorganization for
15 efficiency purposes in conjunction with a lack of funds.

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17 4.4 The primary issue before the Board is whether Respondent provided Appellant with
18 appropriate layoff options as required under the higher education rules. WAC 251-10-030(4)
19 provides, in part:

20 Within the layoff unit, a permanent status employee scheduled for layoff
21 shall be offered employment options to position(s):

- 22 (a) For which he/she meets any specific position requirements;
23 (b) Which are comparable, as determined by the personnel officer; and
24 (c) Which are in:

25 (i) Class(es) in which the employee has held permanent status which
26 have the same or lower salary range maximum as the current class;

(ii) Lower class(es) in those same class series for which the employee
is qualified.

1 The employee may exercise either option subsection (4)(c)(i) or (ii) of this section
2 provided that the employee being replaced is the least senior in a comparable
3 position in the class and has less layoff seniority than the employee replacing
4 him/her. . . .

5 Respondent correctly determined that Appellant had no layoff options under subsection (4) of the
6 rule.

7 4.5 Since Appellant had no layoff options under the subsection cited above, the question
8 becomes whether the College offered other positions as required by WAC 251-10-030(5), which
9 states, in part:

10 . . . a permanent employee scheduled for layoff who has no options available under
11 subsection (4) of this section shall be offered position(s) as follows:

12 (a) The personnel officer will offer in writing not less than three positions from
13 among the highest available classes (unless the total available is less than three);
14 provided that any position(s) offered must be:

15 (i) At the same level or lower than the class from which the employee is being laid
16 off; and

17 (ii) Vacant or held by a provisional, temporary, or probationary employee; and

18 (iii) In a class for which the employee being laid off meets the minimum
19 qualifications and can pass the appropriate qualifying examination.

20 4.6 Respondent argues that subsection (5)(a) excludes positions held by employees who are
21 exempt from the higher education personnel rules. We recently addressed this issue as it relates to
22 the work performed by temporary employees in Johnson v. Columbia Basin College, PAB Case No.
23 RIF-00-0012 (2001). In Johnson we ruled that a distinction exists under those rules between the
24 status of individual employees and the positions in which they are employed. WAC 251-04-040(6)
25 provides that a person employed to work 1050 hours or less is exempted from coverage under the
26 provisions of Chapter 251 WAC. As such, temporary employees working less than 1050 hours are
not entitled to the benefits or protection of the higher education personnel rules. Individuals
employed to work fewer than 1050 hours are temporary employees that are not entitled to receive
sick or annual leave, paid holidays, health insurance, retirement credit or the benefit of continuing

1 employment. However, WAC 251-10-030(5) clearly provides that positions held by temporary
2 employees must be offered when a permanent employee scheduled for layoff has no options
3 available under subsection WAC 251-10-030(4).

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5 4.7 WAC 251-10-030(5) is intended to allow a permanent employee being RIF'd the option of
6 remaining employed in a less than comparable position. Therefore, Respondent should have
7 considered less than comparable positions held by provisional, temporary or probationary
8 employees as well as positions held by less senior part-time employees as possible layoff options
9 for Appellant.

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11 4.8 WAC 251-10-030(5)(a)(iii) provides that any position offered must be in a class for which
12 the employee being laid off meets the minimum qualifications and can pass the appropriate
13 qualifying examination. The sole qualification for the Custodian class is the physical ability to do
14 required work. The medical certification provided by Appellant's physician indicated that
15 Appellant was unable to work from August 29 until September 29, 2000 due to injuries sustained in
16 a motorcycle accident in June 2000. The record does not support Respondent's conclusion that
17 Appellant did not meet the minimum qualifications of the Custodian class. No evidence was
18 produced to suggest that Appellant had a permanent disability that would have prevented him from
19 performing the duties of a custodian, or any other work, after September 29, 2000. Therefore,
20 Respondent should have offered vacant custodian positions to Appellant as RIF options. If
21 Appellant had been offered and accepted such a position, he would have been authorized to use
22 accrued sick leave for the period of disability or injury under WAC 251-22-110(1)(a). If
23 Appellant's injuries prevented him from returning to work and performing the essential functions of
24 a custodian, Respondent could have then initiated a disability separation under WAC 251-10-070.
25 Respondent prematurely determined, without medical verification, that Appellant was unable to
26 perform custodial work.

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V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Gene Gandy is granted and Respondent is ordered within 30 days of this order to:

- Comply with the provisions of WAC 251-10-030(5) and:
- Offer Appellant no less than three layoff options to include any Custodian positions that were vacant from August 9, 2000 through September 16, 2000, and any positions at the same level or lower than the class from which he was laid off which were held by provisional, temporary, or probationary employees or less senior part-time employees, and in classes for which he meets the minimum qualifications and can pass the appropriate qualifying examinations, and
- Reinstatement Appellant to a cyclic year Instructional Technician 1 position, effective September 16, 2000, with all rights and benefits including back pay, sick leave, vacation leave accrual, and retirement and OASDI credits, until such time as he is either placed in one of the positions offered as a layoff option or declines placement in any of the positions offered.

DATED this _____ day of _____, 2001.

WASHINGTON STATE PERSONNEL APPEALS BOARD

Walter T. Hubbard, Chair

Gerald L. Morgen, Vice Chair

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504
(206) 586-1481 or SCAN 321-1481